

Neil M. Kliebenstein (#226060)  
Lucina N. Rios (#325856)  
BOWMAN AND BROOKE LLP  
1741 Technology Drive, Suite 200  
San Jose, CA 95110-1364  
Telephone: (408) 279-5393  
Facsimile: (408) 279-5845  
[Neil.kliebenstein@bowmanandbrooke.com](mailto:Neil.kliebenstein@bowmanandbrooke.com)  
[Lucina.rios@bowmanandbrooke.com](mailto:Lucina.rios@bowmanandbrooke.com)

Attorneys for Defendants  
Takeuchi Mfg. Co. (U.S.), Ltd.

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

JOHN BROWN, an individual, Plaintiff,  
vs.  
TAKEUCHI MFG. CO. (U.S.), LTD, a foreign entity; TAKEUCHI MFG, CO. LTD., a foreign entity; UNITED RENTALS (NORTH AMERICA), INC., a Delaware Corporation; UNITED RENTALS INC., a Delaware Corporation; AND DOES 1 through 50, INCLUSIVE, Defendant(s). } Case No. 2:21-cv-00392-JAM-DMC  
} STIPULATION AND ORDER TO AMEND PRETRIAL SCHEDULING ORDER  
Action Filed: March 3, 2021  
Trial Date: 7, 22, 2024

WHEREAS, Plaintiff John Brown and Defendants Takeuchi Mfg. Co. USA (“Takeuchi”), and United Rentals (North America) Inc., (hereinafter the “Parties”) jointly file this stipulation to request an order to continue all deadlines by 45 days, except the Final Pretrial Conference and the Trial Dates which are set for May 24, 2024 and July 22, 2024 respectively. The parties need the extra time to complete certain discovery needed by the experts to complete their reports. The current expert disclosure date is October 4, 2023.

WHEREAS, Plaintiff filed this action on March 3, 2021, filed the First Amended Complaint on October 1, 2021, and Defendants answered on May 19, 2022.

1        WHEREAS, on May 20, 2022, Judge John A. Mendez approved the Pretrial  
2 Scheduling Order for this matter. (ECF 59). On August 19, 2022, the Parties  
3 stipulated to extending the deadline to file the initial disclosures and clarifying the  
4 Parties served and the Court granted the proposed order. (ECF 60, 61). On  
5 November 14, 2022, the Parties stipulated to continue the case and amend the  
6 pretrial scheduling order and the Court granted the proposed order. (ECF 67, 68).  
7 On November 29, 2022, the Parties stipulated to changing the bench trial to a jury  
8 trial and the Court granted the proposed order. (ECF 69, 70).

9        WHEREAS, on December 30, 2022, Defendant Takeuchi moved to compel  
10 Plaintiff's discovery responses and the Court granted Takeuchi's motion. (ECF  
11 74, 75, 81). On January 20, 2023, Takeuchi moved to compel Plaintiff to provide  
12 supplemental initial disclosures and the Court granted Takeuchi's motion. (ECF  
13 82, 84, 86). On February 28, 2023, Takeuchi moved to dismiss for Plaintiff's  
14 failure to comply with the January 17, 2023 order to produce discovery responses  
15 and the motion was heard on April 19, 2023. (ECF 85, 97). At the hearing, the  
16 Court ordered Plaintiff to produce discovery responses within seven days or the  
17 matter would be dismissed, and the Court issued an order on April 20, 2023  
18 regarding the same. (ECF 97). On April 21, 2023, Plaintiff filed supplemental  
19 initial disclosures. (ECF 98). On April 26, 2023, Plaintiff filed a notice of  
20 compliance to avoid dismissal.

21        WHEREAS, following Plaintiff's notice of compliance, the Parties  
22 stipulated to continuing the case and to amend the pre-trial scheduling order to  
23 move all dates three months out and the Court approved the stipulation on May  
24 22, 2023. (ECF 104, 105).

25        **GOOD CAUSE EXISTS** to grant the stipulation to amend the pre-trial  
26 order. Fed. R. Civ. P. 16(b)(4). Despite the Parties due diligence, they will not be  
27 able to meet the current scheduling order. *Johnson v. Mammoth Recreations, Inc.*,  
28 975 F.2d 604, 609 (9th Cir. 1992).

1       The Parties have been diligently working to meet the pre-trial scheduling  
2 order. Takeuchi's counsel has been diligently contacting Plaintiff and United  
3 Rentals to set up a date for the inspection. The inspection requires the attendance  
4 of several experts along with the Parties. All of the Parties have been responsive  
5 and are communicating about efforts to set this inspection. Despite their efforts,  
6 no date has yet been set because each proposed date has had a scheduling conflict.

7       The deposition of Plaintiff John Brown is calendared for August 16, 2023.  
8 Initially, Takeuchi noticed the deposition for August 1, 2023 but Plaintiff's  
9 attorney said that Mr. Brown was not available. Plaintiff's attorney advised that  
10 Mr. Brown had an "unavoidable prosthetic surgery that he ha[d] scheduled for the  
11 same time." Therefore, the Plaintiff's deposition was re-noticed for August 16,  
12 2023.

13       Moreover, Takeuchi and United Rentals have served a Notice of Request  
14 for a Physical Examination by their retained physical rehabilitation consultant, Dr.  
15 Michael Hembd, M.D. set for the earliest date available on his calendar which is  
16 September 29, 2023. Takeuchi will move for an order allowing the exam if  
17 plaintiff does not agree to allow the exam.

18       Takeuchi has served notices of deposition to several fact witnesses. They  
19 include the deposition of fact witnesses Rick Lederer scheduled for August 18,  
20 2023, the deposition of Plaintiff's former employer, Dig It, which is scheduled for  
21 Tuesday August 22, 2023, the September 6, 2023 deposition of Elizabeth Gray,  
22 the deposition of consultant Scott Buske set for September 8, 2023, the deposition  
23 of first responder Captain Houston scheduled for September 11, 2023 (originally  
24 noticed for August 22, 2023).

25       Therefore, the current pre-trial dates do not provide the Parties with  
26 sufficient time to: 1) complete fact witness depositions so they can provide the  
27 transcripts to their experts for review before their reports are due; 2) review Dr.  
28 Hembd's report on his physical examination before their reports are due; 3)

1 complete and process the data from a second scene inspection before their reports  
2 are due. The Parties agree that none of them will be prejudiced by amending the  
3 pretrial scheduling order and that more time is needed by the Parties and their  
4 experts to complete discovery and for the expert reports.

5 The Parties now stipulate to continue all deadlines by 45 days, except the  
6 Final Pretrial Conference and the Trial Dates which are set for May 24, 2024 and  
7 July 22, 2024 respectively.

8 **Whereas, the current scheduling order is as follows:**

9 Discovery Cutoff Date: 12/1/2023

10 Disclosures of Expert(s) Deadline: 10/4/2023

11 Supplemental Disclosures Deadline: 11/1/2023

12 Dispositive Motion Filing Deadline: 1/10/2024

13 Dispositive Motion Hearing: 3/26/2024 at 1:30 PM

14 Joint Mid-Litigation Statement Filing Deadline: 14 days prior to close of  
15 discovery

16 Final Pretrial Conference: 5/24/24 at 11:00 AM

17 Jury Trial: 7/22/24 at 9:00 AM

18 **The Parties respectfully request the dates be AMENDED as follows, or**  
19 **to dates convenient for the Court:**

20 Discovery Cutoff Date: **1/12/2024**

21 Disclosures of Expert(s) Deadline: **11/17/2023**

22 Supplemental Disclosures Deadline: **12/15/2023**

23 Dispositive Motion Filing Deadline: **2/23/2024**

24 Dispositive Motion Hearing: **4/23/2024, at 1:30 PM**

25 Joint Mid-Litigation Statement Filing Deadline: **14 days prior to close of**  
26 **discovery**

27 Final Pretrial Conference: 5/24/24, at 11:00 AM

28 Jury Trial: 7/22/24 at 9:00 AM

1 Dated: 8/11/2023

BOWMAN AND BROOKE LLP

2 /s/ Neil Kliebenstein

3 Neil M. Kliebenstein

4 Lucina N. Rios

5 Attorneys for Defendant

6 Takeuchi Mfg. Co. (U.S.), Ltd.

7 Dated: 8/11/2023

8 ACQUEST LAW

9 /s/ Nareshwar Virdi

10 Nareshwar S. Virdi

11 Acquest Law Inc.

12 Attorneys for the Plaintiff

13 John Brown

14 Dated: 8/11/2023

GORDON & REES LLP

15 /s/ Russell Mortyn

16 Russell M. Mortyn

17 Attorneys for Defendants

18 United Rentals (North America)

19  
20 **IT IS SO ORDERED.**

21 Dated: August 14, 2023

22 /s/ John A. Mendez

23 THE HONORABLE JOHN A. MENDEZ

24 SENIOR UNITED STATES DISTRICT JUDGE